IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 482 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARLABEN S TALSANIA INSPECTOR OCTROI DEPT - Applicant(s)
Versus
GOVIND GARH STEEL PVT LTD & 3 - Respondent(s)

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Appearance :
Mr Bhaskar P Tanna, Sr.Advocate, assisted by Mr Nikhil S Kariel, for TANNA ASSOCIATES for Applicant(s) : 1,
MR SUNIT S SHAH for Respondent(s) : 1,
MR MANAV A MEHTA for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
Mr S S Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 09/01/2007

ORAL JUDGMENT

1. The petitioner, original complainant had, on behalf of Ahmedabad Municipal Corporation, filed a

criminal complaint against respondents No.1 to 3 for the offence under section 398 of the Bombay Provincial Municipal Corporations Act, 1949 (for short, 'the Act') for the alleged evasion of octroi. The accused persons sought dropping of the proceedings on the ground of limitation but their application was rejected on 2.1.1998 on the ground, *inter alia,* that the period of limitation stood extended in favour of the complainant in view of the directions of the High Court to complete within six months enquiry as to the amount due from the accused. That order was challenged in Revision Application before the learned Addl. Sessions Judge who, by the impugned order dated 21.5.1999, set aside the aforesaid order and directed that the criminal case No.17705/96 be quashed and the proceedings be dropped.

2. Learned Sr.Advocate Mr B.P. Tanna challenged the above order of the learned Addl.Sessions Judge mainly on the ground that the provisions of section 473 of the Criminal Procedure, 1908 (for short, 'the Code') applied in the facts of the present case and

even without an application therefor, the delay if any, in filing the criminal complaint, was required to be condoned. He also submitted that, in the peculiar facts of the case, the period of limitation would start only after the amount due on account of octroi was determined and if the date of determination of the due amount were taken as the starting point of limitation, the complaint was filed within the period of limitation.

3. The undisputed facts comprising of material dates are that, on 21.6.1995, notice to pay octroi was issued by the petitioner on the basis of information collected during the raid of the premises of the respondent which was carried out on 17.6.1995. Upon the respondents rushing to this Court, by way of Special Civil Application No.4916 of 1995, this Court had, on 3.7.1995, issued directions to deposit the amount of Rs. 21,89,426/- as demanded by the petitioner and directed them to determine the amount of octroi duty within six months. Accordingly the amount due was determined on 13.3.1996 which incidentally was Rs.13,14,305/-. Thereafter, the

complaint in question was filed on 25.6.1995.

4. Learned Advocate Mr Manav Mehta, appearing for the respondent-accused, pointed out from the provisions of section 398 that the offence was constituted by importing into the limits of the city any vehicle, animal or goods liable to payment of toll or octroi and introduction or attempt to introduce the same without making or tendering payment of the toll or octroi. According to the provisions of section 428 of the Act, no Magistrate can take cognizance of such offence unless the complaint was made within six months of the commission of such offence, or if such date was not known or even if the offence was a continuing one, within six months of the discovery of such offence. He argued on that basis that, since the date of the raid at the premises of the respondent, the alleged offence was discovered and upon a plain reading of the provisions, period of limitation would start from that date. He further submitted that the provisions of section 473 of the Code cannot be pressed into service in view of the following clear view

expressed by the Hon'ble Supreme Court in *P.P. Unnikrishnan and anr. v. Puttiyottil Alikutty and anr.* (2000 (8) SCC 131):

> *"10. The extension of period contemplated in the said section is only by way of an exception to the period fixed as per provisions of Chapter XXXVI of the Code. Section 473 of the Code therefore cannot operate in respect of any period of limitation prescribed under any other enactment.....".*

Mr Mehta submitted that since an inflexible period of limitation was prescribed in the provisions of section 428 of the Act long before the later provisions of the Code of 1973 came on the statute book, the provisions of section 473 can, by no stretch, be said to have been intended to apply to the period of limitation prescribed under the Act. As for the argument of the due amount being determined and the enquiry therefor taking a reasonable time, he submitted that the proceedings

for fixing liability or determining the dues after disposing the objections of the respondent, were totally irrelevant considerations and neither such proceedings nor the proceedings before this Court in fact, prevented the petitioner from filing a complaint within the period of limitation.

5. **P**lain reading of of the relevant provisions of sections 398 and 428 would show that the offence of evasion of octroi would be complete as soon as the goods liable to the payment of octroi were imported or introduced or attempted to be introduced with the intention of defrauding the Corporation, without paying or tendering the amount of octroi duty payable on such introduction. The determination of liability is neither an ingredient of the offence nor is it a condition precedent for constituting the offence or filing the complaint. On the other hand, the bar of limitation prohibits a Magistrate from taking cognizance of any offence after six months of the commission of the offence with the exception that, if the date of the offence were not known or the offence were a continuing one, cognizance of an

offence can be taken within six months of the discovery of such offence. After that period is over, the embargo against taking cognizance of an offence has to operate. Even as the provisions of section 437 of the Act makes the provisions of the Code applicable to all enquiries and proceedings under the Act before the Magistrate, the provisions of section 473 of the Code may not be available for lifting the embargo or stretching the period of limitation in view of the clear pronouncement of the Supreme Court in *P.P. Unnikrishnan's case (supra)*.

6. **I**n view of the factual and legal position, it is held that the provisions of section 473 of the Criminal Procedure Code are not applicable and determination of due amount of octroi was wholly irrelevant in the facts of the present case. Therefore, there is no reason to interfere with the impugned order closing the proceedings against the respondent. Therefore, the present petition is rejected and Rule is discharged with no order as to costs.

[D. H. Waghela, J.]

msp